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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

Case No. 20-23457-A-7

ERNESTO PATACSIL and MARILYN EMBRY
PATACSIL,

Debtors.

JOSEPH CABARDO et al.,
Plaintiffs,

V.

ERNESTO PATACSIL et al.,
Defendants.

Adv. No. 20-02167-A

FEC-4

MEMORANDUM

Argued and submitted on April 18, 2023

at Sacramento, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances: Stan S. Mallison, Hector R. Martinez,
Heather Hamilton, Mallison & Martinez and
John R. Grele for plaintiffs Joseph
Cabardo, Donnabel Suyat, Marissa Bibat,
Mactabe Bibat, Renato Manipon, Alicia
Bolling, Carlina Cabacongan, John Dave
Cabacongan, Mallison & Martinez, and the
Law Offices of John R. Grele; Charles L.
Hastings, Natali A. Ron, Law Offices of
Hastings & Ron for defendants Ernesto
Patacsil and Marilyn Embry Patacsil

Article III standing is jurisdictional; it requires an injury in fact, traceable to the defendant's conduct that will likely be redressed by a favorable decision. Acting as private attorneys general, eight employees of the defendants sued them in District Court for violations of California labor laws; the employees obtained a substantial judgment, e.g., almost \$2 million, against the defendants for back wages, civil penalties arising from those violations, and attorneys' fees. As to the unpaid wages portion of the judgment, the employees are the real parties in interest; as to the civil penalties, the State of California is the real party in interest. After the employers filed bankruptcy, the employees sought to except the State of California's portion of the judgment from discharge as a penalty "payable to and for the benefit" of the government. 11 U.S.C. § 523(a)(7). Do the employees have Article III standing to assert the State of California's interests in the judgment?

I. FACTS

Ernesto Patacsil and Marilyn Embry Patacsil ("Patacsils") did business as Patacsils Care Homes. Patacsil Care Homes operated seven residential care facilities for mildly impaired developmentally disabled persons. To assist them, the Patacsils employed the plaintiffs and others to act as caregivers for their residents. Patacsils did not pay their employees in an amount or manner consistent with California's wage and hours laws.

Aggrieved by the Patacsils' treatment and after giving notice to the California Labor and Workforce Development Agency, eight employees and/or former employees ("the Cabardo plaintiffs") sued the Patacsils in District Court acting under the Private Attorney General Act, Cal. Labor Code § 2698 et seq. (hereinafter also referred to as "PAGA"), to

1 collect damages for wages and hours violations. They also sought
2 Labor Code penalties for the Patascils' violations of the labor laws.
3 The employees were represented by the law firm of Mallison & Martinez
4 and by John R. Grele ("Grele"). After trial, the District Court
5 awarded the Cabardo plaintiffs damages of \$893,815, penalties of
6 \$79,524 and attorneys' fees of \$1,077,218. Compl. ¶ 8, ECF No. 1.

7 Sometime later, the Patacsils ceased doing business. *Id.* at ¶
8 33.

9 Predictably, the Patacsils filed a Chapter 7 bankruptcy.

10 In response, the eight employees, Mallison & Martinez, and Grele
11 filed an adversary proceeding to protect their judgment from
12 discharge. They advanced two theories for excepting their debt.
13 First, the Cabardo plaintiffs seek to perfect their rights in a debt
14 (here a judgment) that they contend was incurred willfully and
15 maliciously. 11 U.S.C. § 523(a)(6), (c)(1). Second, the Cabardo
16 plaintiffs and their counsel seek to determine the dischargeability of
17 the civil penalties, i.e., \$79,524, as a debt "payable and for the
18 benefit of a governmental unit." 11 U.S.C. § 523(a)(7); Fed. R. Bankr.
19 P. 4007(a). Leveraging their second theory, they suggest that the
20 \$1,077,218 in attorneys' fees awarded for recovering those civil
21 penalties is also nondischargeable.¹ Patacsils filed an answer to the
22 complaint and the matter is ready for trial.

23 **II. PROCEDURE**

24 Recent case law from the Ninth Circuit, *Magadia v. Wal-Mart*
25 *Associates*, 999 F.3d 668, 674-678 (9th Cir. 2020), has brought

26
27 ¹ In some cases, attorneys' fees awarded as damages for a debt not
28 dischargeable under 11 U.S.C. § 523(a) are also nondischargeable. *Cohen v.*
de la Cruz, 523 U.S. 213, 218 (1998); *In re Zito*, 604 B.R. 388, 392-393 (9th
Cir. BAP 2019).

1 guidance to Article III standing in actions prosecuted under the
2 Private Attorney General Act. Believing that the plaintiffs may lack
3 Article III standing to assert the fine, penalty and forfeiture
4 exception, 11 U.S.C. § 523(a)(7), this court issued an order to show
5 cause regarding dismissal. Order to Show Cause, ECF No. 202. Each
6 side filed responsive briefs and the court entertained oral argument.

7 **III. JURISDICTION**

8 This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b);
9 see also General Order No. 182 of the Eastern District of California.
10 Jurisdiction is core. 28 U.S.C. § 157(b)(2)(I); *Carpenters Pension*
11 *Trust Fund for Northern Calif. V. Moxley*, 734 F.3d 864, 868 (9th
12 2013); *In re Kennedy*, 108 F.3d 1015, 1017 (9th Cir. 1997). Plaintiffs
13 do not consent to the entry of final orders and judgments by this
14 court; defendants do so consent. 28 U.S.C. § 157(b)(3); *Wellness*
15 *Int'l Network, Ltd. V. Sharif*, 135 S.Ct. 1932, 1945-46 (2015).
16 Scheduling Order § 2.0, ECF No. 13.

17 **IV. LAW**

18 **A. Article III Standing**

19 **1. Traditional analysis**

20 Article III standing is jurisdictional. *CGM, LLC v. BellSouth*
21 *Telecomms., Inc.*, 664 F.3d 46, 52 (4th Cir. 2011); Fed. R. Civ. P.
22 12(b)(1), incorporated by Fed. R. Bankr. P. 7012. Plaintiffs seeking
23 redress in the federal courts must show Article III standing. *Lujan*
24 *v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992). Standing implicates
25 the case And controversy provisions of the United states Constitution.
26 "In essence the question of standing is whether the litigant is
27 entitled to have the court decide the merits of the dispute or of
28 particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

1 In its constitutional dimension, standing imports
2 justiciability: whether the plaintiff has made out a 'case
3 or controversy' between himself and the defendant within
4 the meaning of Art. III. This is the threshold question in
5 every federal case, determining the power of the court to
6 entertain the suit. As an aspect of justiciability, the
7 standing question is whether the plaintiff has 'alleged
8 such a personal stake in the outcome of the controversy' as
9 to warrant his invocation of federal-court jurisdiction and
10 to justify exercise of the court's remedial powers on his
11 behalf. *The Art. III judicial power exists only to redress
12 or otherwise to protect against injury to the complaining
13 party, even though the court's judgment may benefit others
14 collaterally.* A federal court's jurisdiction therefore can
15 be invoked only when the plaintiff himself has suffered
16 'some threatened or actual injury resulting from the
17 putatively illegal action'

18 *Id.* (internal citations omitted) (emphasis added).

19 Federal courts must address the issue of standing whenever and
20 wherever it arises. *United States v. Hays*, 515 U.S. 737, 742 (1995);
21 *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1005 (9th
22 Cir. 2011). It must even do so sua sponte. Fed. R. Civ. P. 12(h)(3),
23 incorporated by Fed. R. Bankr. P. 7012. Where the issue arises in a
24 motion to dismiss, the court "must accept as true all material
25 allegations of the complaint, and must construe the complaint in favor
26 of the complaining party." *Id.* At 501, citing *Jenkins v. McKeithen*,
27 395 U.S. 411, 421-422 (1969); *W.R. Huff Asset Management, LLC v.*
28 *Deloitte & Touche LLP*, 549 F.3d 100, 106 (2008). The party asserting
federal jurisdiction bears the burden of proof. *Id.* At 561; *Cooksey*
v. Futtrell, 721 F.3d 226, 234 (4th Cir. 2013).

Standing does not exist in gross and advances claim by claim and
as to each form of relief sought. *Davis v. Federal Election Comm'n*,
554 U.S. 724, 734 (2008); *Friends of the Earth, Inc. v. Laidlaw*
Environmental Services (TOC), Inc., 528 U.S. 167, 185 (2000).
Moreover, that the Cabardo plaintiffs enjoyed Article III standing in
District Court does not assure them standing in this court. As the

1 Supreme Court phrased it:

2 The complaining party must also show that he is within the
3 class of persons who will be concretely affected. *Nor does*
4 *a plaintiff who has been subject to injurious conduct of*
5 *one kind possess by virtue of that injury the necessary*
6 *stake in litigating conduct of another kind, although*
7 *similar, to which he has not been subject.*

8 *Blum v. Yaretsky*, 457 U.S. 991, 999 (1982) (emphasis added), citing
9 *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166-167 (1972).

10 The “irreducible constitutional minimum of standing” has three
11 component parts. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560
12 (1992). “[T]raditional Article III standing” requires that the
13 plaintiff has “(1) suffered an injury in fact, (2) that is fairly
14 traceable to the challenged conduct of the defendant, and (3) that is
15 likely to be redressed by a favorable judicial decision.” *Spokeo,*
16 *Inc. v. Robins*, 578 U.S. 330, 338 (2016), as revised (May 24, 2016);
17 *Lujan* at 560; *Magadia v. Wal-Mart Associates, Inc.*, 999 F.3d 668 (9th
18 Cir. 2021) (describing this as traditional Article III standing).
19 Each element is further particularized. “[I]njury in fact” means “an
20 invasion of a legally protected interest” that is “concrete and
21 particularized” and “actual or imminent, not conjectural or
22 hypothetical.” *Spokeo*, 578 U.S. at 339 (2016). “[F]airly traceable”
23 requires a causal connection between the injury that occurred and the
24 defendant’s conduct. *Lujan*, 504 U.S. at 559-560. “[L]ikely, to be
25 redressed” means that there is a “substantial likelihood” the relief
26 sought will redress injury. *Duke Power Co. v. Carolina Env’t Study*
27 *Grp., Inc.*, 438 U.S. 59, 75 (1978). The relief granted must redress
28 the plaintiff’s, not the undifferentiated general public’s injury in
29 fact. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 106
30 (1998) (“[r]elief that does not remedy the injury suffered cannot

1 bootstrap a plaintiff into federal court; that is the very essence of
2 the redressability requirement").

3 The Article III standing applies to bankruptcy proceedings. *In*
4 *re Sherman*, 491 F.3d 948, 956-958 (9th Cir. 2007); *Matter of*
5 *Spielbauer*, 785 Fed. Appx. 369, 371 (9th Cir. 2019); *In re Global*
6 *Technologies, Inc.*, 645 F.3d 201, 210 (3rd Cir. 2011). Outside the
7 bankruptcy, the injury in fact must be traceable to an illegal act,
8 *Miller v. Nissan Motor Acceptance Corp.*, 362 F.3d 209, 221 (3rd Cir.
9 2004); inside bankruptcy, most courts trace the injury in fact not to
10 an illegal act, but to the bankruptcy and its effect on the party
11 before it. *Sherman*, 491 F.3d at 955 (motion to dismiss the petition);
12 *Spielbauer*, 785 Fed. Appx. at *3 (adversary proceeding under 11 U.S.C.
13 § 523(a)(6)).

14 2. Qui tam actions

15 Qui tam actions are a "well-established exception" to the
16 traditional Article III analysis." *Magadia v. Wal-Mart Associates,*
17 *Inc.*, 999 F.3d 668 (9th Cir. 2021), quoting *Spokeo*, 136 S. Ct. at 1552
18 n.*; *Vt. Agency of Nat. Res. v. U.S. ex. rel. Stevens*, 529 US. 765,
19 769 n. 1, 774-776 (2000); *Bennett v. Spear*, 520 U.S. 154, 162 (1997)
20 (citizen-suit provisions of the Clean Air Act does not eliminate
21 Article III standing). "Qui tam is short for the Latin phrase *qui tam*
22 *pro domino rege quam pro se ipso in hac parte sequitur*, which means
23 'who pursues this action on our Lord the King's behalf as well as his
24 own.'" *Vermont Agency*, 529 U.S. at 768 n. 1. "A qui tam statute
25 permits private plaintiffs, known as relators, 'to sue in the
26 government's name for the violation of a public right.'" *Magadia*, 999
27 F.3d at 674, quoting, *Spokeo*, 136 S. Ct. at 1552 n.* (Thomas, J.,
28 concurring). In a qui tam action the government partially assigns its

rights to the relator plaintiff, *U.S. ex. rel. Kelly v. Boeing Co.*, 9 F.3d 743, 748 (9th Cir. 1993), and "it is the government's injury that confers standing upon the private person." *Stalley v. Methodist Healthcare*, 517 F.3d 911, 917 (6th Cir. 2008), cited by *Magadia*, 999 F.3d at 674.

3. Private Attorney General Act plaintiffs

The Ninth Circuit has held that the Private Attorney General Act, Cal. Labor Code § 2698 et seq., is not qui tam action for the purposes of Article III standing. *Magadia*, 999 F.3d at 674-678 ("PAGA's features diverge from Vermont Agency's assignment theory of qui tam injury, and they depart from the traditional criteria of qui tam statutes").

The full reach of *Magadia* was not apparent until almost a year later when the Ninth Circuit decided *Saucillo v. Peck*, 25 F.4th 1118 1125 (9th Cir. 2022). Though *Saucillo* involved a non-PAGA party's right to appeal an order approving the settlement of a PAGA action, it made clear that PAGA plaintiffs must show traditional Article III standing, i.e., injury in fact and redressability, rather than relying on their status of as qui tam plaintiffs:

Magadia v. Wal-Mart Associates, Inc., 999 F.3d 668 (9th Cir. 2021)...concluded that the plaintiff—Roderick Magadia—lacked Article III standing to bring a "meal-break claim" under PAGA "because he did not suffer an injury himself." *This conclusion flowed from Magadia's core holding that plaintiffs seeking penalties under PAGA for California labor law violations must satisfy the traditional Article III standing requirement of an injury in fact... Magadia recognized that "PAGA has several features consistent with traditional qui tam actions." However, we also explained that "PAGA differs in significant respects from traditional qui tam statutes," and so ultimately held that PAGA was not "qui tam for purposes of Article III" because its features "depart from the traditional criteria of qui tam statutes[.]"*

Saucillo, 25 F.4th at 1125 (emphasis added) (internal citations

1 omitted).

2 That said, circuit law requires that Private Attorney General Act
3 plaintiffs, Cal. Labor Code § 2698 et seq., must satisfy the
4 traditional Article III analysis, i.e., injury in fact and
5 redressability, when demonstrating Article III standing.

6 **B. 11 U.S.C. § 523(a) (7)**

7 Most Chapter 7 debtors are entitled to the discharge of all, or
8 almost all, debts incurred prior to the petition date. *In re Zhiry*,
9 No. 21-22759-A-7, 2023 WL 2530252, at *1 (Bankr. E.D. Cal. Mar. 14,
10 2023). Debts excepted from discharge come in two flavors: exceptions
11 that exist as a matter of law (sometimes referred to as self-
12 executing), e.g., 11 U.S.C. § 523(a)(1), (a)(3), (a)(5), (a)(9)-(19),
13 and exceptions that require creditors to file, in a timely fashion, an
14 adversary proceeding to protect their rights. 11 U.S.C. § 523(a)(2),
15 (a)(4), (a)(6). Section 523(a)(7) governs debts for fines or
16 penalties that are due and payable to the government; it is excepted
17 from discharge as a matter of law. *In re Scheer*, 819 F.3d 1206, 1209
18 n. 1 (9th Cir. 2016); *Matter of Towers*, 162 F.3d 952, 953 (7th Cir.
19 1998) (“[d]ebts covered by this subsection thus pass through
20 bankruptcy unaffected; the creditor may disregard the [bankruptcy]
21 proceedings and enforce its rights later”); *In re Williams*, 438 B.R.
22 679, 687 (10th Cir. BAP 2010). Debts excepted from discharge as a
23 matter of law, including those described in § 523(a)(7), follow the
24 debtor out the backdoor of the courthouse, even though the creditor
25 has undertaken no action to perfect or enforce its rights.

26 The rudiments of § 523(a)(7) are well-known:

27 A discharge under section 727, 1141, 11921 1228(a),
28 1228(b), or 1328(b) of this title does not discharge an
individual debtor from any debt—

1 ...

2 (7) *to the extent such debt is for a fine, penalty, or*
3 *forfeiture payable to and for the benefit of a governmental*
4 *unit, and is not compensation for actual pecuniary loss,*
5 *other than a tax penalty--*

6 (A) relating to a tax of a kind not specified in
7 paragraph (1) of this subsection; or

8 (B) imposed with respect to a transaction or event that
9 occurred before three years before the date of the
10 filing of the petition.

11 U.S.C. § 523(a) (7) (emphasis added).

12 Section 523(a) (7) has four elements:

13 To be nondischargeable, the debt must (1) arise as a
14 punishment or sanction for some type of wrongdoing by the
15 debtor and not merely be an enhanced monetary remedy for
16 what is essentially a breach of contract; (2) not be
17 compensation for actual pecuniary loss; (3) be payable to a
18 governmental unit; and (4) be for the benefit of a
19 governmental unit.

20 4 *Collier on Bankruptcy*, Exceptions to Discharge ¶ 523.13 (16th ed.
21 2023).

22 "Governmental unit" is defined term.

23 The term "governmental unit" means United States; State;
24 Commonwealth; District; Territory; municipality; foreign
25 state; department, agency, or instrumentality of the United
26 States (but not a United States trustee while serving as a
27 trustee in a case under this title), a State, a
28 Commonwealth, a District, a Territory, a municipality, or a
29 foreign state; or other foreign or domestic government.

30 U.S.C. § 101(27).

31 The phrase "payable to and for the benefit of a governmental
32 unit," 11 U.S.C. § 523(a) (7), has bedeviled courts for nearly 40
33 years. *See e.g. Kelly v. Robinson*, 479 U.S. 36 (1986) (restitution
34 ordered in a criminal proceeding are excepted from discharge); *Matter*
35 *of Towers*, 162 F.3d 952 955 (1998) (civil penalties payable to the
36 Illinois Attorney General, which distribute them to fraud victims are
37 not excepted from discharge); *Hughes v. Sanders*, 469 F.3d 475 (6th

1 Cir. 2006) (judgment for legal malpractice and sanctions payable to
2 the client was not excepted from discharge).

3 When a party is unclear as to whether a particular debt falls
4 within one of enumerated debts excepted from discharge as a matter of
5 law, e.g., 11 U.S.C. § 523(a)(7), the aggrieved party may seek
6 declaratory relief from the bankruptcy court. Fed. R. Bankr. P.
7 4007(a). There are only two prerequisites to relief under Rule
8 4007(a); that the party seeking relief: (1) be a debtor or a creditor,
9 *Cundiff v. Cundiff (In re Cundiff)*, 227 B.R. 476 (6th Cir. BAP 1998);
10 *In re Spong*, 661 F.2d 6 (2nd Cir. 1981); 9 *Collier on Bankruptcy*,
11 Chapter 4007 Determination of Dischargeability of Debt ¶ 4007.02 (16th
12 ed. 2023); and (2) subject matter jurisdiction, including standing.
13 *In re Sherman*, 491 F.3d 948, 958 n. 10 (9th Cir. 2007); *In re Mlincek*,
14 350 B.R. 764 (Bankr. N.D. Ohio 2006); *In re Erikson*, No. 12-59165,
15 2013 WL 2035875, at *2 (Bankr. E.D. Mich. May 10, 2013). In most
16 instances, a creditor's Article III standing is, in fact,
17 unremarkable.

18 **C. Private Attorney General Act**

19 Historically, enforcement of the wage and hours law has been the
20 prerogative of the state. *Arias v. Superior Ct.*, 46 Cal.4th 969, 980,
21 209 P.3d 923, 929 (2009).

22 That changed in 2003, when the California legislature enacted the
23 Labor Code Private Attorney Generals Act of 2004. Cal. Labor Code §
24 26988 et seq. As one court explained it:

25 The Legislature declared that adequate financing of labor
26 law enforcement was necessary to achieve maximum compliance
27 with state labor laws, that staffing levels for labor law
28 enforcement agencies had declined and were unlikely to keep
pace with the future growth of the labor market, and that
it was therefore in the public interest to allow aggrieved
employees, acting as private attorneys general, to recover

1 civil penalties for Labor Code violations, with the
2 understanding that labor law enforcement agencies were to
retain primacy over private enforcement efforts.

3 *Id.* at 980.

4 Rather than relying on the state to enforce the wage and hours
5 laws, the Private Attorney General Act allows aggrieved workers to sue
6 a noncompliant employer for violation of the wage and hours laws. The
7 statute is procedural. *Amalgamated Transit Union, Loc. 1756, AFL-CIO*
8 *v. Superior Ct.*, 46 Cal.4th 993, 1003 (2009). Injured employees who
9 wish to act as Private Attorneys General must comply with Labor Code §
10 2699(a). They start by giving written notice of the violation of both
11 the employer and the Labor and Workforce Development Agency; the
12 notice must describe both "the facts and theories supporting the
13 violation." Cal. Labor Code § 2699.3(a)(1). If the agency
14 investigates the employees claim and issues a citation to the
15 employer, "the employee may not commence" a civil action under the
16 Private Attorney General Act. Cal. Labor Code § 2699.3(b)(2)(A)(i).
17 If the agency expressly declines to investigate or investigates but
18 does not issue a citation, generally within 65 days of the notice, the
19 employees may commence a civil action against the employer for
20 penalties. Cal. Labor Code § 2699.3(a)(2)(B). If the State of
21 California declines to issue a citation to the employer, it may have
22 no right to intervene in the Private Attorney General Act action.
23 *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 389-390
24 (2014); *Magadia v. Wal-Mart Associates*, 999 F.3d 668 (9th 2021);
25 *contra Viking River Cruises, Inc. v. Moriana*, 142 S.Ct. 1906, 1914 n.
26 2 (2022).

27 Aside from any wages due by virtue of the violations, the
28 employee may bring an action on behalf of himself and other employees

1 to recover the "civil penalties" otherwise due the State of
2 California:

3 Notwithstanding any other provision of law, any provision
4 of this code that provides for a civil penalty to be
5 assessed and collected by the Labor and Workforce
6 Development Agency or any of its departments, divisions,
7 commissions, boards, agencies, or employees, for a
8 violation of this code, may, as an alternative, be
9 recovered through a *civil action brought by an aggrieved
10 employee on behalf of himself or herself and other current
11 or former employees* pursuant to the procedures specified in
12 Section 2699.3.

13 Cal. Labor Code § 2699(a).

14 Likewise, California Labor Codes 2699(g)(1) provides that such an
15 aggrieved employee may recover the civil penalties and, if the
16 employee prevails, the attorneys' fees expended in proving entitlement
17 to those penalties.

18 Except as provided in paragraph (2), *an aggrieved employee
19 may recover the civil penalty described in subdivision (f)
20 in a civil action pursuant to the procedures specified in
21 Section 2699.3 filed on behalf of himself or herself and
22 other current or former employees against whom one or more
23 of the alleged violations was committed. Any employee who
24 prevails in any action shall be entitled to an award of
25 reasonable attorney's fees and costs....*

26 Cal. Labor Code § 2699(g)(1) (emphasis added).

27 If civil penalties are recovered, they are--as the Cabardo
28 plaintiffs phrase it--"split," Opp'n 7:20, 8:11, ECF No. 213--between
the Labor and Workforce Development Agency and the aggrieved
employees:

Except as provided in subdivision (j), *civil penalties
recovered by aggrieved employees shall be distributed as
follows: 75 percent to the Labor and Workforce Development
Agency for enforcement of labor laws, including the
administration of this part, and for education of employers
and employees about their rights and responsibilities under
this code, to be continuously appropriated to supplement
and not supplant the funding to the agency for those
purposes; and 25 percent to the aggrieved employees.*

Cal. Labor Code § 2699(i) (emphasis added).

1 **V. DISCUSSION**

2 The question is: whether the Cabardo plaintiffs, acting as
3 Private Attorneys General, Cal. Labor Code §§ 2698 et seq., have
4 Article III standing to except the District Court judgment for civil
5 penalties, \$79,524 or some portion thereof, under § 523(a)(7). The
6 Ninth Circuit has not yet ruled on this question. *Cf. In re*
7 *Schimmels*, 127 F.3d 875, 880-882 (9th Cir. 1997) (False Claims Act and
8 § 523(a)(7), not reaching the merits);² *Porter v. Nabors Drilling USA*
9 *LP*, 854 F.3d 1057, 1062-1063 (9th Cir. 2017) (Private Attorney General
10 Act plaintiffs are not acting as “an agent of the government” for the
11 purposes of 11 U.S.C. § 362(b)(4) (exceptions to the stay)).

12 Moreover, the award of attorneys’ fees made ancillary to the
13 civil penalties do not provide a basis for standing.

14 [A]n interest that is merely a “byproduct” of the suit
15 itself cannot give rise to a cognizable injury in fact for
16 Article III standing purposes. *See Steel Co.*, 523 U.S., at
17 107, 118 S.Ct. 1003 (“[A] plaintiff cannot achieve standing
18 to litigate a substantive issue by bringing suit for the
cost of bringing suit”); *see also Diamond v. Charles*, 476
U.S. 54, 69-71, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986)
(holding that assessment of attorney’s fees against a party
does not confer standing to pursue the action on appeal).
19 *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 773
20 (2000).

21 **A. Direct Standing Under § 523(a)(7)**

22 The grant of authority to act on behalf of the government does
23 not confer Article III standing. *Hollingsworth v. Perry*, 570 U.S.
24 693, 710 (2013); *Magadia v. Wal-Mart Associates, Inc.*, 999 F.3d 668,

25
26 ² *In re Schimmels* is distinguishable from the present action because the
False Claims Act is, in fact, a qui tam action for the purposes of standing.
27 *U.S. ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 748 (9th Cir. 1993); *compare*
Magadia v. Wal-Mart Associates, Inc., 999 F.3d 668, 674-678 (9th Cir. 2021)
28 (Private Attorney General Act, Cal. Labor Code § 2698 et seq., is not a qui
tam action for the purposes of Article III standing purposes).

1 674.³ States "have no power directly to enlarge or contract federal
2 jurisdiction." *Fiedler v. Clark*, 714 F.2d 77, 80 (9th Cir. 1983).
3 "[S]tanding in federal court is a question of federal law, not state
4 law." *Hollingsworth*, 570 U.S. at 715.

5 The Cabardo plaintiffs have not suffered a direct injury with
6 respect to § 523(a)(7). It is that statute that defines the scope of
7 the injury to be redressed. As the Supreme Court stated:

8 Although *standing* in no way depends on the merits of the
9 plaintiff's contention that particular conduct is illegal,
10 e.g., *Flast v. Cohen*, 392 U.S. 83, 99, 88 S.Ct. 1942, 1952,
11 20 L.Ed.2d 947 (1968), it often turns on the nature and
12 source of the claim asserted. The actual or threatened
13 injury required by Art. III may exist solely by virtue of
'statutes creating legal rights, the invasion of which
creates standing' See *Linda R.S. v. Richard D.*,
supra, 410 U.S., at 617 n. 3, 93 S.Ct., at 1148; *Sierra*
Club v. Morton, 405 U.S. 727, 732, 92 S.Ct. 1361, 1364, 31
L.Ed.2d 636 (1972).

14 *Warth v. Seldin*, 422 U.S. 490, 500 (1975) (emphasis added).

15 1. Economic injuries

16 To be sure, an economic injury would suffice for Article III
17 standing. But no such injury exists here. As to the penalties, the
18 real party in interest is the State of California or, more properly,
19 it's labor law enforcement agencies. *Viking River Cruises, Inv. V.*
20 *Moriana*, 142 S.Ct. 1906, 1914 (2022); *Magadia* at 677; *Sakkab v.*

22 ³ This result is precisely the opposite of that in the District Court action.
23 Both the District Court action to liquidate the debt and this action to
24 except the debt, 11 U.S.C. § 523(a)(7), are both governed by *Magadia* and its
25 requirement that the plaintiffs suffer an injury in fact, apart from the
26 Cabardo plaintiffs' standing as relators. In the District Court, the
27 plaintiffs suffered injury and enjoyed a share of the economic pie. Cal.
28 Labor Code § 2699(i) (relators received 25% of the civil penalties). Here,
as a matter of law, the only beneficiary of an action under § 523(a)(7) to
except the debt from discharge is the State of California. *Matter of Towers*,
162 F.3d 952 (7th Cir. 1998). Any injury the Cabardo plaintiffs suffered as
lost wages is not included within the scope of § 523(a)(7), which applies to
penalties, and not compensatory damages. Consequently, *Magadia* dictates
precisely the opposite finding as to Article III standing in discharge
exception litigation under § 523(a)(7).

1 *Luxottica Retail North America, Inc.*, 803 F.3d 425 (9th Cir. 2015)
2 (the state labor enforcing agencies are the real parties in interest);
3 *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 381
4 (2014), abrogated by *Viking River Cruises, Inc. v. Moriana*, 213 L. Ed.
5 2d 179, 142 S. Ct. 1906 (2022) (“[t]he civil penalties recovered on
6 behalf of the state under the [Private Attorney General Act] are
7 distinct from the statutory damages to which employees may be entitled
8 in their individual capacities”). By statute, the state retains 75%
9 of the penalty and the aggrieved employees retain 25%. Cal. Labor
10 Code § 2699(i); *Magadia*, 999 F.3d at 674-678; *Saucillo*, 25 F.4th at
11 1125.

12 At first blush, the 25% of the civil penalty due employees looks
13 like an economic interest that would support Article III standing in
14 an action under § 523(a)(7). But that thinking fails upon analysis.
15 Section 523(a)(7) ever only applies to penalties paid to and retained
16 by a governmental unit. 11 U.S.C. § 523(a)(7) (“[a] discharge under
17 section 727...does not discharge an individual from any debt--...to
18 the extent that such debt is for a fine, penalty, or forfeiture
19 payable to and for the benefit of a governmental unit”). In a Private
20 Attorney General action, the State of California is the real party in
21 interest and, acting under the enabling statute, Cal. Labor Code §
22 2699(i),” and, after the fact, the State of California divides those
23 penalties with the employees who have acted to collect them.

24 That the plaintiff’s interest in those funds, i.e., 25% of the
25 civil penalty, is not protected by § 523(a)(7) has been resolved
26 definitively. *Matter of Towers*, 162 F.3d 952 (7th Cir. 1998). In
27 *Towers*, the court considered civil fraud restitution in the amount of
28 \$210,000 paid “to the Attorney General of Illinois, but for the

1 benefit of the victims of the [debtor's] fraud." *Id.* at 955. The
2 Seventh Circuit held that the civil restitution under the Illinois
3 consumer protection laws was "payable to, but not for the benefit of,
4 the Attorney General of Illinois" and was therefore dischargeable.
5 Finding the benefit to the State of Illinois insufficient, the court
6 stated:

7 Perhaps one could reply that the state's benefit need not
8 be pecuniary. Deterrence of fraud is a benefit to all of
9 the state's citizens... But the context in which "benefit"
10 appears—"payable to and for the benefit of a governmental
11 unit"—implies that the "benefit" in question is the benefit
12 of the money that is "payable to" the governmental unit.

11 *Id.* at 956.

12 Having determined that it is only the 75% of the penalty payable
13 to the State of California, and not the 25% reimbursed by the State of
14 California to aggrieved employees, that is protected by § 523(a)(7),
15 it is a short step to concluding that the 25% of the penalty does not
16 support Article III standing. "An interest unrelated to injury in
17 fact is insufficient to give a plaintiff standing. *The interest must*
18 *consist of obtaining compensation for, or preventing, the violation of*
19 *a legally protected right."* *Vt. Agency of Nat. Res. v. U.S. ex rel.*
20 *Stevens*, 529 U.S. 765, 772 (2000).

21 Moreover, since the Cabardo plaintiffs have no economic interest
22 in the civil penalties that might be excepted from discharge, the 75%
23 of the penalty payable to the State of California does not give the
24 Cabardo plaintiffs standing under § 523(a)(7). *Magadia* at 674-678
25 (plaintiff who did not suffer "meal-break violations" himself lacked
26 Article III standing). That said, the Cabardo plaintiffs may not rely
27 on an economic interest in the civil penalties to find Article III
28 standing.

2. Nonpecuniary injuries

Certainly, non-economic injuries harm will suffice for Article III standing. *Griswold v. State of Conn.*, 381 U.S. 479, 484-485 (1965) (invasion of privacy); *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1396 (9th Cir. 1992) (emotional distress); *School Dist. of Abington Township, Penn. v. Schempp*, 374 U.S. 203, 224 fn. 9 (1963) (free exercise of religion). But they do not do so here.

While civil penalties do have a deterrent effect on employers who violate the wage and hours laws, in most cases, that is insufficient to create standing. Private Attorney General Act plaintiffs seeking to except debts from discharge under § 523(a)(7) are closely akin to the standing issues that arise in citizen-suits. A "citizen suit" is "[a]n action under a statute giving citizens the right to sue violators of the law (esp. environmental law) and to seek injunctive relief and penalties." *Black's Law Dictionary* (11th ed. 2019). The Supreme Court has consistently held that in the absence of a continuing violation, a citizen-suit plaintiff may not establish Article III standing (injury in fact) by virtue of a civil penalty imposed against the defendant. *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 185-187 (2000) (Clean Water Act) ("private plaintiffs, unlike the Federal Government, may not sue to assess penalties for wholly past violations"); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 90 (1998) (Emergency Planning and Community Right-To-Know Act of 1986); *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 59, (1987) (Clean Water Act) ("the harm sought to be addressed by the citizen suit lies in the present or the future, not in the past"). The citizen-suit comparison is particularly compelling. Like §

1 523(a)(7), both Clean Water Act and the Emergency Planning and Right-
2 to-Know Act of 1986 provide for penalties paid solely to the
3 government. See 33 U.S.C. § 1365(a) (Clean Water Act); 42 U.S.C. §
4 11045-11046 (Emergency Planning and Right to Know Act). While the
5 District Court judgment awarded civil penalties, which will ultimately
6 be divided, 75% to the State of California and 25% to the aggrieved
7 employees, it is only the portion of the civil penalty payable to the
8 government itself that is excepted from discharge. *Matter of Towers*,
9 162 F.3d 952 (7th Cir. 1998). As a result, the citizen-suit Article
10 III standing cases suggest that Private Attorney General Act
11 plaintiffs, Cal. Labor Code § 2698 et seq., lack standing to assert
12 the discharge exception in 523(a)(7) based on a similar penalty.
13 Moreover, the Cabardo plaintiffs admit that the Patacsils ceased
14 operations and, therefore, there is no continuing wage and hours
15 violation. Compl. at ¶ 33. From this, the court concludes that the
16 award of civil penalties is insufficient to find Article III standing.

17 **B. Representational Standing**

18 The Cabardo plaintiffs contend that they speak as representatives
19 of the State of California, the Labor and Workforce Development Agency
20 and, therefore, have standing to determine whether the \$79,524 in
21 civil penalties awarded is non-dischargeable under § 523(a)(7). Opp'n
22 2:21-22 ("on behalf of the State"), 6:19, 7:6, ECF No. 213.

23 Whether Private Attorney General Act plaintiffs are characterized
24 as "agents" or "complete assignees" is disputed. *Viking River*
25 *Cruises, Inc. v. Moriana*, 142 S.Ct. 1906, 1914 n. 2 (2022).

26 The Supreme Court and circuit courts have ruled on a closely
27 related area: whether an assignee has Article III standing by virtue
28 of an assignment of rights. *Sprint Communications Co., L.P. v. APCC*

1 *Services, Inc.*, 554 U.S. 269, 285 (2008) (assignee for the purposes of
2 collection who received "all rights, title and interest" for purposes
3 of collection); *In re Boyajian*, 564 F.3d 1088, 1089, 1091 (9th Cir.
4 2009) (assignment of "its right, title and interest" sufficient for
5 statutory standing); *Connecticut v. Physicians Health Servs. of Conn.,*
6 *Inc.*, 287 F.3d 110, 117 (2d Cir.2002) ("[A] valid and binding
7 assignment of a claim (or a portion thereof)—not only the right or
8 ability to bring suit—may confer standing on the assignee").

9 *Post-Sprint Communications*, the Second Circuit Court of Appeals
10 decided *W.R. Huff Asset Management, LLC v. Deloitte & Touche LLP*, 549
11 F.3d 100, 106 (2008), cited by the Ninth Circuit with approval in
12 *Northstar Financial Advisors, Inc. v. Schwab Investments*, 779 F.3d
13 1036 (9th Cir. 2015). In *W.R. Huff Asset Management*, the plaintiff
14 was an investment advisor for institutional investors. As an
15 investment advisor, it acted as the investors' attorney-in-fact for
16 the purposes purchasing securities and, if necessary, litigating
17 disputes. In fact, the plaintiff did not have an ownership interest
18 in the stocks purchased for its clients. The plaintiff advised some of
19 its clients to purchase debt securities from Adelphia Communications
20 Corporation. When it became known that Adelphia Communications had
21 committed widespread securities fraud and W.R. Huff's clients suffered
22 financial losses, W.R. Huff sued Adelphia Communications on behalf of
23 its investors. The defendants moved to dismiss for lack of standing
24 and the District Court denied the motion. The Second Circuit of
25 Appeals reversed and remanded. Applying the teachings of *Sprint*
26 *Communications*, the Second Circuit held that an assignee may not show
27 Article III standing as an assignee unless the assignee has "legal
28 title to, or a proprietary interest in, the claim." p. 108.

1 Addressing whether plaintiff W.R. Huff, acting on behalf of his
2 clients, had Article III standing, the court stated:

3 *Huff has not alleged in its complaint that it suffered any*
4 *injury; rather, the alleged injury was suffered by Huff's*
5 *clients. Therefore, the dispositive question is whether*
6 *Huff, as the named plaintiff, can demonstrate an "injury-*
7 *in-fact" through some other means, such as an assignment of*
8 *claims. Courts may permit a party with standing to assign*
9 *its claims to a third party, who will stand in the place of*
10 *the injured party and satisfy the constitutional*
11 *requirement of an "injury-in-fact."*

12 *Id.* at 107 (emphasis added), citing *Vermont Agency of Natural Res. v.*
13 *United States ex rel. Stevens*, 529 U.S. 765, 773 (2000).

14 The court continued and articulated *Sprint Communications'*
15 standards for Article III standing.

16 In our view, *Sprint* makes clear that the minimum
17 requirement for an injury-in-fact is that the plaintiff
18 have legal title to, or a proprietary interest in, the
19 claim. *Id.* at 2543-44 ("There is an important distinction
20 between simply hiring a lawyer and assigning a claim to a
21 lawyer (on the lawyer's promise to remit litigation
22 proceeds). The latter confers a property right (which
23 creditors might attach); the former does not.")

24 *Id.* at 108 (emphasis added).

25 Simply put, *W.R. Huff's* teaches us that the minimum requirement for
26 standing by a third party, e.g., agent or attorney-in-fact, is "legal
27 title to, or proprietary interest in, the claim."

28 As applied to the Cabardo plaintiffs, *W.R. Huff* precludes a
finding of Article III standing as to a § 523(a)(7) cause of action.
The problem is that Private Attorney General Act plaintiffs do not
enjoy legal title to, or a proprietary interest in, the civil
penalties.⁴ The weight of the authority treats these plaintiffs as an

⁴ In *Sprint Communications*, the Supreme Court acknowledged that if the assignment conveyed less than all the assignors' rights that the purported assignees would lack Article III standing. "Petitioners argue, for example, that the aggregators have not themselves suffered any injury in fact and that the assignments for collection "do not suffice to transfer the payphone operators' injuries." It is, of course, true that the aggregators did not

1 "agent" or a "proxy" for the state. *Viking River Cruises, Inv. V.*
2 *Moriana*, 142 S.Ct. 1906, 1914 n. 2 (2022) ("[t]he extent to which PAGA
3 plaintiffs truly act as agents of the State rather than complete
4 assignees is disputed"); *Sakkab v. Luxottica Retain N. Am. Inc.*, 803
5 F.3d 425, 435 (9th Cir. 2015); *Saucillo v. Peck*, 25 F.4th 1118, 1125-
6 1129 (9th Cir. 2022); *Edward Borelli et al. v. Black Diamond*
7 *Aggregates, Inc.*, 2022 WL 2079375 *8 (E.D. Cal. 2022); *Iskanian v. CLS*
8 *Transp. Los Angeles, LLC*, 59 Cal4th 348, 382 (2014); *Amalgamated*
9 *Transit Union, Loc. 1756, AFL-CIO v. Superior Ct.*, 46 Cal. 4th 993,
10 1003 (2009); *contra Magadia v. Wal-Mart Associates, Inc.*, 999 F.3d
11 668, 677 (9th Cir. 2021) (the Private Attorney General Act "represents
12 a permanent, full assignment of California's interest to the aggrieved
13 employee").⁵ The State of California is always the real party in
14 interest. *Iskanian*, 59 Cal4th at 382; *Viking River Cruises Inv.*, 142
15 S.Ct. at 1914. Critically, the aggrieved employee has neither title,
16 nor ownership of the penalties.

17 A cause of action is transferable, that is, assignable, by
18 its owner if it arises out of a legal obligation or a
19 violation of a property right. (Civ.Code, § 954.) *The Labor*
20 *Code Private Attorneys General Act of 2004* does not create
21 *property rights or any other substantive rights. Nor does*
22 *it impose any legal obligations. It is simply a procedural*
23 *statute allowing an aggrieved employee to recover civil*
24 *penalties—for Labor Code violations—that otherwise would be*

25 originally suffer any injury caused by the long-distance carriers; the
26 payphone operators did. But the payphone operators assigned their claims to
27 the aggregators lock, stock, and barrel." *Sprint Communications*, 554 U.S. at
28 286.

29 ⁵ *Magadia's* suggestion that the Private Attorney General Act as a "permanent,
30 full assignment of California's interest to the aggrieved employee" has been
31 largely rejected. *Viking River Cruises Inv.*, 142 S.Ct. at 1914 n. 2.
32 Moreover, suggesting that *Magadia* be construed as a full assignment within
33 the meaning of *W.R. Huff* would run afoul of long-standing California
34 precedent, which prohibits the assignment of statutory penalties. *Esposti v.*
35 *Rivers Brothers, Inc.*, 207 Cal. 570, 573 (1929); *Peterson v. Ball*, 211 Cal.
36 461, 468-470 (1931); *Western Mortgage etc. Co. v. Gray*, 215 Cal. 191, 198
37 (1932); *Amalgamated Transit Union, Loc. 1756, AFL-CIO v. Superior Ct.*, 46
38 Cal. 4th 993, 1003 (2009).

1 sought by state labor law enforcement agencies.
2 *Amalgamated Transit Union*, 46 Cal. 4th 993, 1003 at (2009) (emphasis
3 added). Under this characterization, the Cabardo plaintiffs do not
4 meet the *W.R. Huff* "legal title or proprietary interest" rule.

5 **C. Judgment Creditor Standing**

6 Generally, uncertainty as to whether a pre-petition judgment (or
7 here, more properly a part of it) is affected--"discharged" in
8 bankruptcy vernacular, is a sufficient injury in fact for Article III
9 purposes. *In re Sherman*, 491 F.3d 948, 965 (9th Cir. 2007) (that the
10 bankruptcy "might" discharge the creditor's debt was a sufficient
11 basis for Article III standing); *Matter of Spielbauer*, 785 F. App'x
12 369, 371 (9th Cir. 2019) (state court judgment); *Cf. In re Hawker*
13 *Beechcraft, Inc.*, 515 B.R. 416, 433 (S.D.N.Y. 2014) (relators seeking
14 to except an unliquidated debt from discharge, 11 U.S.C. § 1141(d)(6),
15 had Article III standing).

16 Here, there is no doubt that the Cabardo plaintiffs are
17 prepetition judgment creditors. *Lawrence T. Lasagna, Inc. v. Foster*,
18 609 F.2d 392, 395 (9th Cir. 1979); *In re Jacks*, 266 B.R. 728, 736 (9th
19 Cir. BAP 2001); 11 U.S.C. §§ 101(5) (claim), 101(10) (creditor).

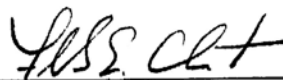
20 The question is whether some of that judgment has been forgiven.
21 That judgment is comprised of unpaid wages due the Cabardo plaintiffs
22 and civil penalties due the State of California. Insofar as the civil
23 penalties within the judgment are concerned, the plaintiffs act as
24 agents for the State of California. In the absence of a declaration
25 by this court as to the dischargeability of the civil penalties (and
26 attorneys' fees arising from that award), the Cabardo plaintiffs'
27 ability to enforce their judgment will be impaired. They will be
28 uncertain whether they may collect all of the judgment (if the civil

1 penalties are deemed accepted by § 523(a)(7)) or only the remainder of
2 the judgment, i.e., unpaid wages (if those are ultimately deemed
3 excepted from discharge, 11 U.S.C. § 523(a)(6)). *Magadia* does not
4 suggest otherwise. That uncertainty is a sufficient injury in fact,
5 traceable to the bankruptcy, and that will likely be redressed for
6 Article III standing.

7 **VI. CONCLUSION**

8 Ordinarily, injury in fact—and by extension Article III standing—
9 in discharge exception adversary proceedings is obvious. Here, not so
10 much. In this action, the injury in fact, i.e., uncertainty as to the
11 application of the discharge to civil penalties that will be paid to
12 the State of California, falls just inside the third base line; the
13 question is in fair territory. Prior to bankruptcy, acting under the
14 Private Attorney Generals Act, the plaintiffs obtained a judgment
15 against the defendants for unpaid wages and civil penalties. But for
16 the plaintiffs' need to know the extent to which their judgement
17 remains enforceable, i.e., only the unpaid wage portion (and not the
18 civil penalties) or the entire amount, Article III standing would not
19 exist. The order to show cause will be discharged; the court will
20 issue an order from chambers.

21 **Dated:** April 25, 2023

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23 _____
24 Fredrick E. Clement
25 United States Bankruptcy Judge
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ____, via the U.S. mail.

Attorneys for the Plaintiff(s)	Attorneys for the Defendant(s)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814